

Moreover, the sequence of events surrounding the disconnection undercuts BMI's claims. As Radiofone's Reply pointed out, the Lafayette non-wireline cellular system came on line on or about April 8, 1988. Yet Radiofone's customers had been experiencing roamer disconnection by BMI in February of 1988, well before the system in which Radiofone supposedly had an ownership interest became operational. Indeed, those problems only worsened after Radiofone complained to the Enforcement Division in June, 1988 about BMI's other anticompetitive practices. BMI's explanation that suddenly -- and incorrectly -- it thought Radiofone had such an ownership interest in July, 1988, and disconnected service, just does not wash. This is particularly the case given BMI's advertising campaign, and apparent marketing campaign, touting the lack of automatic roaming capability by BMI's competitors, and specifically Radiofone's lack of roaming capability in Lafayette. See Reply, at 10-13 & n.6.

B. The First Supplement to the Complaint

On January 15, 1991, Radiofone filed its first Supplement to Complaint concerning anticompetitive activity undertaken by BMI against Baton Rouge Cellular Telephone Company (BRCTC), a commonly-controlled affiliate of Radiofone. Specifically, BMI had proposed, through its affiliates, to use cellular facilities in the Baton Rouge MSA to provide cellular service to its Baton Rouge customers while they were travelling in the adjacent

Louisiana 5 - Beauregard RSA ("LA 5 RSA") and Louisiana 7 - West Feliciana RSA ("LA 7 RSA"). However, BMI had prospectively refused to provide roaming service to Radiofone's affiliate. See Supplement to Complaint, at 3, Attachment B.

During the cellular licensing process, Radiofone's affiliate challenged BMI's prospective refusal to provide roaming to non-affiliated carriers in the LA 5 and LA 7 RSA markets. The Mobile Services Division agreed that BMI's prospective refusal was contrary to the FCC's rules and conditioned grant of the new cell site application on the basis of providing roamer service to BRCTC's cellular customers in the LA 5 and LA 7 RSAs. Baton Rouge MSA Limited Partnership, 6 FCC Rcd. 5948 (1991) [hereinafter Order].⁶ Radiofone subsequently filed an Addendum to Supplement to Complaint (on October 24, 1991) to supply the record with a copy of the Mobile Services Division Order.

In an extraordinary effort to thwart both the Mobile Services Division Order and BRCTC's roaming ability in the LA 5 and LA 7 RSAs, BMI returned the authorization to construct the cell site. BMI's Reply to Opposition to Petition for Reconsideration, filed in connection with an unsuccessful effort to have the Order reconsidered, recounts BMI's willingness to forego the authorization rather than allow the requested

⁶ On reconsideration, the Common Carrier Bureau employed a different legal theory to hold that BMI was under a duty to provide roamer service to BRCTC's customers. Baton Rouge MSA Limited Partnership, 8 FCC Rcd. 2889 (Com. Car. Bur. 1993).

roaming. See Reply to Opposition to Petition for Reconsideration, at 4-5 (appended as Attachment A hereto). Consequently, Radiofone and its affiliates were denied the ability to roam in the LA 5 and LA 7 RSAs until March 27, 1992 and May 26, 1994, respectively, the dates when the Commission's records indicate that non-wireline facilities were placed into commercial service.

C. The Second Supplement to the Complaint

On June 16, 1995, Radiofone filed the second Supplement to Complaint, detailing further instances in BMI's continuing pattern of roaming interference. For instance, the Supplement recounts the denial of roamer service to Radiofone customers attempting to roam in BMI's service area near Plaquemine, Louisiana. Despite repeated requests by Radiofone, the service was not restored until after the intervention of the Louisiana Public Service Commission. June 16, 1995 Supplement to Complaint, at 4, Exhibit B. The Supplement also reports four other instances of roaming interruption, including instances where, like the "450-8XXX" roamer interruption several years earlier, the decision not to restore service (if not the decision to interfere with roamer service in the first instance) was a calculated decision by BMI management. Id. at 2-3, Exhibit A; see also id. at 3, Exhibits C, D.⁷

⁷ Radiofone wishes to correct an inadvertent misstatement of the procedural history of this case contained in its Reply to Answer to Second Supplement to Complaint, at 1-2.

BMI's Answer to the Supplement principally focused on matters of procedure. It argued that the Supplement was an unauthorized pleading (as it did in the case of the first Supplement), that the matters in the Supplement were barred under the statute of limitations and "laches," that BMI had responded to the outages, (and therefore, apparently, Radiofone was not damaged), and that the issues raised by Radiofone had already been resolved as Informal Complaints. Answer, at 8-12.

On the merits, BMI argued that the interruptions to Radiofone's customers were "minor"; they were the fault of a former BMI employee who "misunderstood" BMI's roaming policies, Answer to Second Supplement to Complaint, at 12, Exhibit A, para. 3; they were Motorola's fault; and, in any event, the interruptions were an acceptable norm in the cellular industry, id. at 12-13. BMI also argued that it simply could not respond to one disconnection episode (and, incredibly, attempted to blame Radiofone for this failure), and that, in any event, Radiofone's customers had manual roaming available to them when automatic roaming was denied. Id. at 11, 13.

Radiofone's Reply responded to BMI's procedural allegations, including the suggestions that Radiofone was guilty of "laches" and that the Supplement was barred by the

There, Radiofone stated that the initial Complaint was filed on behalf of the Baton Rouge Cellular Telephone Company (BRCTC), its commonly controlled affiliate. As the record reflects, the initial Complaint was filed on behalf of Radiofone. The first Supplement, as the record also reflects, was filed to reflect prospective anticompetitive activity against Radiofone's commonly controlled affiliate, BRCTC.

Commission's Informal Complaint rules. See Reply to Answer to Second Supplemental Complaint, at 4-7. Radiofone also took issue with BMI's suggestion that the alleged availability of manual roaming was an acceptable substitute for automatic roaming, and noted the anticompetitive consequences of sudden, unannounced discontinuances of service of this sort. Id. at 9-10. Radiofone concluded that the conduct in the second Supplement was merely a continuation of the pattern of anticompetitive conduct detailed in Radiofone's original Complaint and the January 15, 1991 Supplement. Id. at 11.⁸

ATTACHMENT 2

Excerpt from Communications Daily, Aug. 14, 1996, at 5.

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August 14, 1996, Wednesday

SECTION: Vol. 16, No. 158; Pg. 5

LENGTH: 2183 words

BODY:

Bell Atlantic (BA) is asking customers in Md., N.J., and Pa. to sign consent form that allows company to share customer information with other current and future subsidiaries and as new competitors enter markets. Letter was in mailing that included thick book of discount coupons. David Heyman, program dir., relationship marketing, said form was designed by lawyers to comply with Telecom Act requirements that limit subsidiaries from sharing customer information. He admitted language is Act "is restrictive," adding: "This will allow us to market to our customers intelligently." Under law, any new units of BA, such as long distance and video services, will be unable to use existing database, he said. Customers expect company units to know what they need and Telecom Act restrictions require such consent forms if information is to be shared. Form says BA may offer "telephone equipment and voice message, long distance, information and entertainment services" in future. Consent can be withdrawn, customer is told, by writing company. Coupon book, called "Local Values Savings Booklet," includes 85 restaurants, 48 recreational offerings, several dozen national businesses. Heyman said customer response in last 2 weeks exceeded response in last 6 months. Domino's Pizza reported "hundreds of redemptions" daily from booklet. Heyman said Pacific Telesis and BellSouth also are using similar offerings "to add value for customers."

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